

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

<p>DANIEL J. WIK,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD R. KUNEGO, in his personal and individual capacity,</p>	<p>NOTICE OF MOTION</p> <p>Index No.: 6:11 CV 6205 CJS</p>
<p style="text-align: center;">Defendant.</p>	

**NOTICE OF MOTION FOR SUMMARY JUDGMENT SEEKING
DISMISSAL OF PLAINTIFF'S COMPLAINT**

Defendant, DONALD R. KUNEGO, by and through his attorneys, Lippman O'Connor, Robert H. Flynn, Esq., of counsel, hereby moves this Court for Order granting the defendant's motion to Opt Out of this Court's referral to Alternative Dispute Resolution pursuant to Local Rule 16.1 and Section 2.2 of the ADR PLAN WESTERN DISTRICT OF NEW YORK, which Motion is to be heard at the U.S. Courthouse, 100 State Street, Rochester, New York 14614, at a time to be established by the Court for the reasons set forth in the Affirmation of Robert H. Flynn, submitted in support of the instant Motion.

Dated: Buffalo, New York
September 13, 2012

LIPPMAN O'CONNOR

By: /s/ Robert H. Flynn, Esq.
Robert H. Flynn, Esq.
Attorneys for Defendants
Donald R. Kunego, in his personal
and individual capacity
300 Olympic Towers
300 Pearl Street
Buffalo, NY
(716) 854-4705
Robert H. Flynn@Selective.com

TO:

Daniel J. Wik
Pro Se Plaintiff
659 Averill Avenue
Rochester, NY 14416

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL J. WIK, Plaintiff,	AFFIRMATION OF COUNSEL Index No.: 6:11 CV 6205 CJS
- vs - DONALD R. KUNEGO, in his personal and individual capacity, Defendant.	

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

Robert H. Flynn, Esq., affirms the following under penalty of perjury:

1. I am an attorney duly licensed to practice in the State of New York, including the Western District of New York, and am affiliated with the law firm of Lippman O'Connor, attorneys for defendant, Hon. Donald R. Kunego, in the above-entitled action. As such, I am fully familiar with the facts and circumstances of this matter as set forth herein.

2. This Affirmation is submitted in support of the motion filed on behalf of defendant, Hon. Donald R. Kunego, seeking an Order granting defendant's motion to Opt Out of Alternative Dispute Resolution on the grounds that the stated claims are not actionable, frivolous and intentionally designed to defame, harass, alarm and annoy the defendant. Moreover, defendant's motion for summary judgment [#25] dismissing the Complaint has been filed and is pending before this Court.

THE PARTIES

3. Plaintiff is appearing pro-se and resides at 659 Averill Avenue, Rochester, New York. Plaintiff alleges that he lives “in the New York Republic, and has done so for several years”. (See Plaintiff’s Complaint at **Exhibit A** at p. 1 and paragraph “15”.)

4. The defendant, Hon. Donald R. Kunego, is a duly elected Town Justice in the Town of Bergen, Bergen, New York. An Answer was filed on behalf of Judge Kunego and a copy of same is attached hereto as **Exhibit B**.

5. By way of background, the plaintiff filed a similar if not identical Complaint against another sitting judge in the Town of Bergen. Specifically, the plaintiff commenced a Federal Court action (Case 6:11-CV-6220-CJS) against the Hon. Robert G. Swapcienski in the Western District of New York. A copy of the Complaint against Judge Swapcienski is attached hereto as **Exhibit C**.

6. Clearly Judge Swapcienski is not a party to this action and it is unknown why the pro-se plaintiff chose to commence separate actions against the Bergen Town Justices insofar as the underlying facts are essentially the same, or at the very least the cases are factually intertwined. Recently, the case against Judge Swapcienski was dismissed via summary judgment by way of (United States District Court) Judge Siragusa’s March 1, 2012 Decision and Order, a copy of which is attached hereto as **Exhibit D**. District Court Judge Siragusa held that the alleged actions of Judge Swapcienski were protected by the doctrine of Absolute Judicial Immunity and Mr. Wik’s Complaint was summarily dismissed. An identical dispositive motion has been filed on behalf of Judge Kunego. [#25] That motion also calls for the dismissal of plaintiff’s Complaint pursuant to the doctrine of Absolute Judicial Immunity.

OPTING OUT

7. The defendant has filed a motion for summary judgment [#25] seeking dismissal of plaintiff's Complaint on the grounds that plaintiff's causes of action are meritless and, more importantly, are barred by the doctrine of Absolute Judicial Immunity. The motion is stilling currently pending before the Court. Subsequent to the filing of defendants motion for summary judgment, this matter was referred to Alternative Dispute Resolution (hereinafter "ADR").

8. This action and the aforementioned action against Judge Robert Swapcienski both stem from a traffic stop, the issuance of traffic tickets and court appearances related thereto. Plaintiff argues that he's not a citizen of any state or country and that, apparently, laws do not apply to him. Plaintiff has challenged the authority and jurisdiction of Bergen Town Court. He also challenged the validity of this Court.

9. In the now dismissed action against Judge Swapcienski, the plaintiff challenged the constitutional standing of United States District Court Judge Charles J. Siragusa. An Order was issued cautioning the plaintiff to forego filing frivolous applications. A copy of said Order is attached hereto as **Exhibit E**.

10. The action against Judge Kunego is frivolous as well. The plaintiff in this action has literally made out a federal case as the result of being issued traffic citations on or about July 27, 2010. Not only has plaintiff filed Federal Court actions against two Town of Bergen Justices, Plaintiff commenced two other federal court actions related to the underlying traffic citations and his interactions with the Court system.

11. First, plaintiff commenced yet another action in this Court against New York State Supreme Court Justice Robert C. Noonan [Case 6:12-cv-06400-CJS] for failing to issue a Writ of Habeas Corpus. A copy of the Complaint is attached hereto as **Exhibit F**.

12. Secondly, plaintiff commenced another action in this Court against New York State Supreme Court Justice Richard Dollinger [Case 6:12-cv-06399-CJS] for allegedly rescinding a Writ of Habeas Corpus purportedly issued by another judge. (See paragraph "42" of plaintiff's Complaint attached hereto as **Exhibit G**.)

13. It is clear that the plaintiff is merely trying harass and inundate Judge Kunego and the other aforementioned judges with frivolous law suits and motions for "miscellaneous relief".

14. Plaintiff has also tried to commence criminal actions, on his own, against Judge Kunego and Judge Swapcienski. A special prosecutor was appointed to consider whether or not the accusatory instruments prepared by Mr. Wik should be prosecuted. The Special Prosecutor elected not to prosecute the citizen filed accusatory instruments. The accusatory instruments were dismissed and sealed pursuant New York State Criminal Procedure Law §160.50. See correspondence from the Chief Clerk of Genesee Supreme and County Courts dated July 6, 2012 attached hereto as **EXHIBIT H**.

15. In addition to all of the foregoing, plaintiff filed a complaint with the New York State Judicial Conduct Commission. That complaint requires an independent investigation of the allegations made by Mr. Wik and, upon information and belief, the investigation is underway.

16. Clearly, the plaintiff is only motivated by a desire to harass and annoy Judge Kunego. As set forth in defendant's motion for summary judgment, plaintiff's claims against Judge Kunego are frivolous and, more importantly, barred by the doctrine of Absolute Judicial Immunity.

17. As such, the defendant has no interest in ADR as any form of settlement or other agreement would only encourage the plaintiff and others who share his beliefs to engage in similar conduct. Even in the event that defendant's motion for summary judgment is denied,

defendant is of the strong belief that plaintiff's claims are utterly meritless and frivolous. Therefore, any compensation, no matter how small, that is ever awarded to the plaintiff will have to come by way of a jury's verdict.

18. Based on the foregoing, the defendant herein respectfully asks this Court to grant defendant's motion to Opt Out of ADR.

WHEREFORE, it is respectfully requested that this Court issue an Order granting defendant's motion to Opt Out of ADR along with such other and further relief as the Court deems just and proper.

Dated: Buffalo, New York
September 13, 2012

/s/ Robert H. Flynn
Robert H. Flynn

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2012 I electronically filed the foregoing Notice of Motion and Affirmation of Robert H. Flynn, Esq. with the Clerk of the District Court using its CM/ECF system which would then electronically notify the following DM/ECF participants on this case and *via United States Mail*:

Plaintiff:

Daniel J. Wik
Pro Se Plaintiff
c/o non-domestic
659 Averill Avenue
Rochester, NY 14416

/s/ Robert H. Flynn
Robert H. Flynn